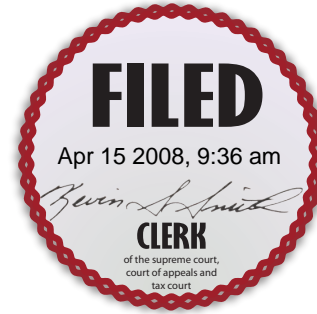


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROBERT W. ANDERSON,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 48A02-0710-CR-868

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Dennis D. Carroll, Judge  
Cause No. 48D01-0511-FC-320

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**April 15, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Robert W. Anderson (“Anderson”) appeals the revocation of his probation. We affirm.

### **Issue**

Anderson raises the sole issue of whether there was sufficient evidence to support the revocation of his probation.

### **Facts and Procedural History**

Pursuant to a plea agreement in 2006, a trial court sentenced Anderson to a term of thirty-six months, with fifteen months to be executed and twenty-one months suspended with probation. One of the conditions of his probation was that he not “violate the laws of Indiana or the U.S. and failure to behave well in society.” Appendix at 8.

On June 22, 2007, Anderson struck L.B. The State filed a Notice of Violation of Probation, stating that “you are alleged to have committed the following new criminal offense(s): Ct I: Battery, Class A Misdemeanor, as filed in Anderson City Court under Cause Number 48H02-0706-CM-001976.” App. at 8. The trial court conducted an evidentiary hearing on the 2007 Battery charge and found that Anderson had violated a condition of his probation. On July 31, 2007, the trial court ordered fifteen months of Anderson’s previously suspended sentence to be executed.<sup>1</sup> Anderson now appeals.

### **Discussion and Decision**

#### **I. Standard of Review**

Robertson argues that there was not sufficient evidence that he struck L.B. The State

must prove a probation violation by a preponderance of the evidence. Ind. Code § 35-38-2-3(e). Where a defendant challenges the sufficiency of the evidence in a probation revocation, our review is as follows:

[W]e neither reweigh the evidence nor reassess witness credibility. “Instead, we look at the evidence most favorable to the probation court’s judgment and determine whether there is substantial evidence of probative value supporting revocation. If so, we will affirm.” When, as here, the alleged probation violation is the commission of a new crime, the State does not need to show that the probationer was convicted of a new crime. The trial court only needs to find that there was probable cause to believe that the defendant violated a criminal law.

Whatley v. State, 847 N.E.2d 1007, 1010 (Ind. Ct. App. 2006) (quoting Marsh v. State, 818 N.E.2d 143, 148 (Ind. Ct. App. 2004)) (citations omitted).

## II. Analysis

Robertson seizes upon L.B.’s description of the beginning of the fight as support for his argument. L.B. testified as follows:

A: [W]e was outside then he had came up on me and started smacking me then we started fighting.  
Q: And who came up and, and tried to smack you?  
A: Rob [Anderson].  
...  
Q: Okay. Where did he hit you?  
A: He didn’t hit me.  
Q: He didn’t, he tried to hit you and, and missed or what?  
A: I went back.  
Q: Okay you dodged?  
A: Yes.  
Q: What happened then?  
A: Then we had started fightin’.  
...

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<sup>1</sup> Later that year, the State moved to nolle prosequi the 2007 Battery charge and the case was dismissed.

Q: . . . Did Mr. Anderson ever manage to, to strike you or hit you in any manner on the 22<sup>nd</sup> of June? Did he ever land a punch or, or, or get his hands on you?

A: Yeah, when we was fightin'.

Q: Okay. What did he do?

A: We, we started fightin', throwin' blows, you know.

Q: Okay. Was he using a fist?

A: Yes.

Q: Okay. And did he land any punches on you?

A: Yeah.

Q: Where?

A: One.

Q: Where?

A: On my jaw.

Transcript at 60-61 (emphasis added). Anderson asserts that this testimony was inconsistent and he therefore encourages us to reweigh the evidence. It appears, however, that the statement underlined above pertained to the sequence of events, not as a general denial that Anderson touched L.B. “in a rude, insolent or angry manner.” Ind. Code § 35-42-2-1(a). Regardless, we do not reweigh the evidence. There was sufficient evidence to support the revocation of Anderson’s probation.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.